JOHN A. NEJEDLY
CONTRA COSTA YOUTH ASSOCIATION

IBLA 82-931 Decided March 28, 1984

Appeal from a decision of the Deputy Director, Minerals Management Service, denying an appeal from the approval of a prospecting plan and a finding of no significant impact. MMS-18-MIN.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Environment-- National Environmental Policy Act of 1969: Environmental Statements

   Analysis of the environmental impact of a proposed prospecting plan under a hardrock mineral prospecting permit issued pursuant to 16 U.S.C. § 520 (1976), should properly consider the potential cumulative impact of increased vehicular traffic on an access road due to prospecting activity under the permit and related activity on adjacent mining claims.

2. Mineral Leasing Act for Acquired Lands: Environment-- National Environmental Policy Act of 1969: Environmental Statements

   A finding that a proposed action will not have a significant impact on the environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that a hard look has been taken at environmental problems, that relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

APPEARANCES: John A. Nejedly, Esq., pro se, and for Contra Costa Youth Association; LeRoy Pedersen, Oklahoma City, Oklahoma, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

John A. Nejedly and the Contra Costa Youth Association have appealed from a decision of the Deputy Director, Minerals Management Service (MMS), dated April 8, 1982, denying their appeal from approval of a prospecting

plan with respect to hardrock minerals prospecting permit CA-1698 and a determination not to require an environmental impact statement (EIS) in connection with the plan.

Effective August 1, 1975, a hardrock minerals prospecting permit CA-1698 was issued to LeRoy Pedersen, by the Bureau of Land Management (BLM), for 578.6 acres of acquired land situated in secs. 9 through 11, T. 21 N., R. 11 E., Mount Diablo meridian, Plumas and Sierra Counties, California, within the Plumas and Tahoe National Forests. 1/ The permit was issued pursuant to 16 U.S.C. § 520 (1976), which governs prospecting and development on acquired forest lands, and section 402 of the Reorganization Plan No. 3 which transferred the functions of the Secretary of Agriculture under that section to the Secretary of the Interior. 2/

On July 7, 1975, Pedersen had submitted to the Area Mining Supervisor, Conservation Division, Geological Survey (Survey), 3/ a prospecting plan with respect to permit CA-1698, in accordance with 30 CFR 231.10. The plan was subsequently amended on February 11, 1976, August 24, 1978, and January 23, 1979. The plan, as amended, proposes a selective drilling program to evaluate subsurface mineralization, the clearing, inspection, and analysis of previous underground workings, aerial photograph and aerial magnetometer surveys, construction of a temporary portable field office building, and a limited bulk sampling program. The permit area includes the old Four Hills Mine.

On April 23, 1979, Survey issued a "Final Environmental Analysis of Prospecting Plan" (FEA), which assessed the environmental impact of Pedersen's

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1/ In their statement of reasons, appellants request a stay of Pedersen's prospecting operations pending the Board's decision. Department regulations, however, provide for an automatic stay. 43 CFR 4.21(a) provides that the effect of decision is stayed during the time in which the decision may be appealed and during the pendency of any properly filed appeal. On May 13, 1982, LeRoy Pedersen filed a motion to intervene in the appeal and to place the decision appealed from in full force and effect under 43 CFR 4.21(a). Because of Pedersen's adverse interest in the matter under appeal, we grant the motion to intervene as a matter of right. However, considering our disposition of this case, the motion to lift the stay is moot.

2/ Permit CA-1698 was originally issued for a 2-year term and was extended through July 31, 1979. On Feb. 2, 1979, BLM denied Pedersen's request that the term of the permit be suspended pending approval of a prospecting plan, submitted July 7, 1975. On appeal, the Board held that the Department's failure to act promptly on Pedersen's prospecting plan required that, in the interest of fairness, the permit be suspended until the final approval date of the plan or the date of service of the Board's decision, "whichever is later." LeRoy Pedersen, 56 IBLA 86, 95 (1981).

3/ On Jan. 19, 1982, the Secretary of the Interior transferred all of the functions previously exercised by the Conservation Division, Survey, to the newly created MMS, including the administration of prospecting permits. Secretarial Order No. 3071, 47 FR 4751 (Feb. 2, 1982). Subsequently, the Secretary transferred all onshore minerals management functions of MMS, not relating to royalty management to the Bureau of Land Management. 48 FR 8982 (Mar. 2, 1983).

prospecting plan. The Area Mining Supervisor concluded that the plan does not constitute a "major Federal action significantly affecting the quality of the human environment" and that an EIS was not required by section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332 (1976) (FEA at 61). On May 2, 1979, the Conservation Manager, Western Region, Survey, concurred in the Area Mining Supervisor's conclusion that an EIS was not required. By letter dated May 23, 1979, Survey approved Pedersen's amended prospecting plan subject to the provisions of 30 CFR 231 and 43 CFR 23, the terms, conditions, and stipulations of the prospecting permit, and 11 special stipulations. 4/

On June 6, 1979, appellants appealed to the Director, Survey, from the May 2, 1979, determination that an EIS was not required and the May 23, 1979, approval of the prospecting plan. In its April 1982 decision, MMS denied appellants' appeal and this appeal followed.

Because this case involves other associated prospecting and related activity, we must briefly set forth such activity and relevant administrative action. In June 1977, Pedersen submitted to the Forest Service (FS) a "prospecting" plan with respect to certain unpatented lode mining claims (the Alpine and Pinnacle group of claims) owned by Pedersen and located on public domain land adjacent to land encompassed in permit CA-1698. On February 5, 1979, FS issued a final environmental assessment report (EAR) on an amended prospecting plan. By decision dated March 30, 1979, the Forest Supervisor, Tahoe National Forest, FS, approved the amended prospecting plan, which included a provision for limited access over existing jeep roads. 5/ The plan called for certain road improvements, a drilling program, and processing 13,000 tons of ore into mineral concentrate. By decision dated June 25, 1979, the Forest Supervisor responded to appellants' appeal of the March 1979 decision approving the amended prospecting plan and concluded in part that an EIS

4/ By letter dated May 4, 1982, MMS affirmed Survey's approval of Pedersen's prospecting plan. Three additional special stipulations were imposed, effective July 1, 1982.

5/ On Jan. 7, 1981, the Forest Supervisor, Tahoe National Forest, FS, approved a road use permit (17-35-80 (D)) with respect to access through the Tahoe National Forest. The permit involves a 3-mile section of road one-half mile east of the A-Tree Junction to the Four Hills Mine and certain spur roads. The record also includes a "proposed" road use permit with respect to access through the Plumas National Forest. The permit would involve a 16.2-mile section of road from the A-Tree Junction north to the town of Sloat, California. By letter dated Mar. 11, 1981, the Forest Supervisor, Plumas National Forest, FS, informed appellant Nejedly that a road use permit would not be issued at that time because Pedersen's proposed use of the road from the A-Tree Junction to the town of Sloat, California, was "at least three years out." In early 1981, Survey issued a "Supplement" to its FEA, which addressed the environmental impact of the roads and certain proposed improvements. The supplement incorporated by reference the FS' February 1979 EAR with respect to Pedersen's prospecting plan for his unpatented lode mining claims. It further stated that the roads and proposed improvements "were considered in the Finding of No Significant Impact Determinations" of the FEA at pages 59 through 60 (Supplement at 2).

was not required in connection with the plan. By decision dated December 10, 1980, the Regional Forester, Pacific Southwest Region, FS, concurred in the Forest Supervisor's June 1979 decision.

By letter dated August 25, 1980, Pedersen outlined to FS an operating plan with respect to the location of a pilot plant building, to be used in processing the 13,000 tons of ore from the Alpine and Pinnacle mining claims and as a field office, on the adjacent Odd Lot No. 1 mining claim. The District Ranger, Downieville Ranger District, Tahoe National Forest, FS, subsequently approved Pedersen's operating plan by decision dated May 7, 1981, following preparation of an "Environmental Assessment" (EA), and concluded that an EIS was not required by decision dated May 12, 1981.

Appellant Nejedly was, at the time of approval of Pedersen's prospecting plan for permit CA-1698, the owner of land situated south of the permit area, around Hawley Lake. The land is leased to appellant Contra Costa Youth Association for use as a summer camp for handicapped children. Access to the camp is provided by an extension of the existing jeep road from A-Tree Junction to the Four Hills Mine. By deed dated December 1, 1981, appellant Nejedly granted the land to the Mount Diablo Council, Boy Scouts of America.

The principal argument advanced by appellants during the course of these various appeals is that an EIS should have been prepared prior to a decision as to whether or not to approve Pedersen's prospecting plan under permit CA-1698. This argument rests primarily on appellants' contention that an EIS is the only appropriate method for addressing Pedersen's "entire project," i.e., prospecting and related activity on both the subject land and adjacent mining claims (Statement of Reasons at 3). Appellants assert that the cumulative effect of a known series of related acts "must be addressed in a unified environmental inquiry and determination (see, e.g., 40 CFR §§ 1508.7, 1508.25)." Appellants point out that while plans for a large bulk sampling program and a test plant were withdrawn from the prospecting plan at the request of the Area Mining Supervisor, Survey, with respect to permit CA-1698, they were included as part of the operating plan with respect to the Odd Lot No. 1 mining claim. Appellants conclude that:

> Together with the permanent structures, water supply systems and sanitation facilities, massive road improvements, and other project features approved by the Forest Service, the effect of the [Area Mining] Supervisor's recommendation that certain features be withdrawn from land under BLM authority has been utterly nullified. The environmental review process of NEPA, which by law has to include the entire project, has been unlawfully fragmented among different agencies and different components of the entire project, the consequence of which is to allow a far more environmentally destructive operation than ever would have been approved had the project been evaluated in its entirety. The numerous significant adverse impacts of the project, viewed as a whole, can be adequately addressed only through preparation of an EIS.

Id. at 4.

In its April 1982 decision, MMS responded that "[t]he statutory and regulatory responsibilities of the FS and the Survey with regard to mineral prospecting permits and lease applications on acquired lands, and mining claims on public domain lands are separate. * * * The Survey has primary responsibility for assessment of proposed activities on acquired lands and the FS on lands covered by Pedersen's mining claims" (Decision at 8). MMS concluded that the environmental assessments by Survey and FS of the two projects, when "read together, present a cumulative assessment of the potential environmental consequences of the proposed activities." Id. at 9.

[1] Section 102 of NEPA, supra, requires preparation of an EIS for "major Federal actions significantly affecting the quality of the human environment." Thus, two elements are required: significant environmental impact and Federal action which is major in scope. NAACP v. Medical Center, Inc., 584 F.2d 619 (3rd Cir. 1978). The regulations of the Council on Environmental Quality (CEQ) state that one of the factors to be considered in evaluating the significance of the environmental impact of a proposed action is its cumulative impact with other related actions. Actions which separately might have an insignificant impact may cumulatively have a significant impact. Thus, 40 CFR 1508.27(b)(7) states that: "Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment."

The question of considering related actions in a unified fashion has arisen a number of times in the context of determining the proper scope of an EIS, particularly in connection with construction of a highway. See Swain v. Brinegar, 542 F.2d 364 (7th Cir. 1976). The problem with the segmentation of a project, e.g., a highway, is twofold. Id. at 368-69. First, while separate EIS's of distinct segments of a project may adequately address the individual impact of each segment, the cumulative impact of all of the segments may not be addressed at all. Second, the decision with respect to one segment may well predetermine additional segments such that an EIS with respect to the latter segments is a mere formality. For these reasons, we agree with appellants that the cumulative impact of related actions must be addressed in a unified fashion. See also, Animal Protection Institute of America, 79 IBLA 94 (1984).

With respect to whether Pedersen's proposed prospecting activity constitutes related actions resulting in a cumulative impact, we can only discern one cumulative impact. Prospecting activity under permit CA-1698, to the extent that it would involve selective drilling and sampling of previous workings, would affect only the immediate permit area. Similarly, prospecting activity on adjacent mining claims, including the Odd Lot No. 1 mining claim, to the extent that it would involve drilling, sampling, and processing of ore, would affect only the immediate area of the mining claims. To this extent, each prospecting activity has "substantial independent utility" and does not foreclose alternatives with respect to the other related prospecting activity. Citizens for Glenwood Canyon, 64 IBLA 346, 351 (1982). Accordingly, an EA could properly focus on each activity separately. However, each of these proposed activities would affect traffic on the access road from A-Tree Junction to the four Hills Mine, in terms of hauling equipment,

supplies, personnel, and mineral material. This would result in a cumulative impact on the human environment. The effect of increased vehicular traffic was considered in the FS' February 1979 EAR and incorporated by reference in the FEA (FEA at 57). In its supplement to the FEA, Survey concluded that the FS' assessment of the environmental impact of use of the access road, with certain improvements, was adequate and that this was "considered" in its finding of no significant impact (Supplement at 2).

The record indicates that FS considered the impact of increased vehicular traffic in both its February 1979 EAR with respect to prospecting activity on Pedersen's mining claims and its May 1981 EA with respect to the location of the pilot plant building on the Odd Lot No. 1 mining claim. In fact, the May 1981 EA states, under the heading "Overview and Alternatives Considered," that the building, to be used in processing the 13,000 tons of ore, was located within the prospecting area because it "would significantly decrease the amount of haul traffic on the access road." Pedersen had originally proposed that the access road be changed to a two lane road to allow ore to be hauled from the area, with "numerous trips (2600)." Id. However, because the bulk of traffic would still be associated with prospecting and related activity on Pedersen's mining claims, whether the processing plant is located within or out of the area, we believe that the cumulative impact of increased vehicular traffic on the access road has for the most part been addressed.

Appellants have not established that the cumulative impact of increased vehicular traffic associated with the prospecting activity under permit CA-1698 and on Pedersen's adjacent mining claims is significant, such that it should be addressed in an EIS.

In the FEA at page 59, Survey concluded that: "After assessing the cumulative impacts of prospecting on both the mining claims and Permit 1698, we determine that the proposed action will not have a cumulatively significant impact on the human environment." A finding of no significant impact was also made by FS in connection with prospecting and related activity under its jurisdiction. See 36 CFR 228.4(f). Appellants have not rebutted these conclusions. The record shows that while FS and Survey prepared separate environmental assessments each considered the other project and the resulting impacts. The mere fact that a series of related actions result in a cumulative impact does necessarily equate with a significant environmental impact, within the meaning of section 102 of NEPA, supra. Where the cumulative impact is not significant, it may properly be addressed in an environmental assessment.

[2] Nor do we find that the prospecting activity under permit CA-1698 independently requires the preparation of an EIS. As noted above, Survey concluded that the proposed action would not significantly affect the quality of the human environment (FEA at 61). The reasonableness of a finding of no significant impact has been upheld where the agency has&taken a hard look at the environmental problems; identified relevant areas of environmental concern; and made a convincing case that the impact is insignificant, or if there is significant impact, that changes in the project have sufficiently

minimized it. Como-Falcon Coalition, Inc. v. United States Department of Labor, 465 F. Supp. 850 (D. Minn. 1978), aff'd on other grounds, 609 F.2d 342 (8th Cir. 1979), cert. denied, 446 U.S. 936 (1980). In such circumstances, we will affirm a finding of no significant impact. See, e.g., Citizens for Glenwood Canyon, supra, and cases cited therein.

In addition to the argument regarding cumulative impact, appellants raise a number of contentions in favor of preparation of an EIS. They contend that Pedersen's prospecting operation, as approved by FS and Survey, includes all the operations necessary for mining and that the FEA failed to adequately assess the impact of full-scale mining. In its April 1982 decision, MMS stated that the proposed action was a prospecting plan to determine the existence of commercially valuable minerals and that a separate environmental assessment would be prepared to consider full-scale mining upon discovery of a valuable mineral deposit and submission of an application for a preference right lease to BLM, in accordance with 43 CFR Subpart 3521. MMS concluded that an EA would be prepared "when the nature of the discovery and the features of a proposed mining plan [are] * * * known" (Decision at 11). In their statement of reasons, appellants respond that: "Should an application subsequently be submitted, all of the facilities necessary for its implementation would already be in place -- making a mockery of any environmental review of such an application."

We agree with the conclusion of MMS that the FEA did not have to consider the impact of full-scale mining in conjunction with approval of a prospecting plan. There is nothing about approval of such a plan that makes issuance of a preference right lease and approval of a mining plan a foregone conclusion. They are contingent on discovery of a valuable mineral deposit. See 43 CFR 3521.1-1(i). An EA will be prepared at that time, which will then be subject to protest and/or appeal.

Appellants also contend that the FEA failed to adequately consider an alternative involving the incremental implementation of the prospecting plan, thereby minimizing environmental impact. This alternative was considered in the FEA at page 54. Survey concluded that in view of the inaccessibility of the site, except for 3 to 4 months per year, and the limited duration of the prospecting permit, "it would not be reasonable to encumber the prospecting activities in this manner" (Decision at 7). We agree. Under a valid prospecting permit, the permittee has the "right to prospect on and explore the lands involved to determine the existence of, or workability of, and commercial value of the mineral deposits therein." 43 CFR 3510.1-2. In its April 1982 decision at page 7, MMS concluded that the prospecting plan, as amended, was "consistent with sound exploration practice and has been revised in several respects during the 6 years of its pendency to assure minimum disruption of the environment." In addition, a permittee is required to minimize environmental impacts under 30 CFR 231.4 and the terms and conditions of the permit and an approved prospecting plan. Incremental implementation of the prospecting plan, with potential termination at any point prior to expiration of the prospecting permit, would unjustifiably interfere with Pedersen's right to prospect during the term of his permit, in view of the fact that Survey has clearly provided for minimal disruption of the environment.

We find no merit in appellants' analysis which assumes that certain aspects of Pedersen's proposed prospecting are actually mining. As noted above, MMS concluded that the proposed activity is "consistent with sound exploration practice" (Decision at 7). Appellants have presented no evidence to the contrary, especially to the effect that removal of material from the land would not be considered prospecting, i.e., "necessary for experimental work or the demonstration of the existence of [mineral] * * * deposits in commercial quantities." 6/ 43 CFR 3510.1-2.

Appellants also assert that permit CA-1698 is partially within the East Yuba RARE II roadless area which has been designated for further planning as a potential wilderness area under the Wilderness Act of 1964, 16 U.S.C. § 1131 (1976), and that an EIS is further justified by the fact that the "'prospecting' operation that would include a heliport, milling machinery operating year-round, housing accommodations, and improved road standards, would destroy the wilderness character of the area and its potential for inclusion within the National Wilderness Preservation System" (Statement of Reasons at 2). The description of the prospecting operations by appellants, except to the extent it mentions "housing accommodations," refers to proposed operations on Pedersen's adjacent mining claims, not prospecting under permit CA-1698. As noted above, the FEA was properly confined to the impact of proposed operations under permit CA-1698. Appellants have not stated how the wilderness character of the East Yuba RARE II roadless area would be "destroy[ed]." Moreover, we note that the FEA at pages 47-48, considered the impact of prospecting under permit CA-1698 on the potential wilderness area. Survey concluded that "roadless areas in the further planning category will be considered for all uses, and planning will be accomplished at the National Forest level." Id. at 48. Thus, Survey relied on the FS to assess the impact of prospecting on wilderness values. This issue was considered in the FS' February 1979 EAR, which concluded that "prospecting operations should not alter the characteristics which qualified the area for wilderness study" (Forest Supervisor's responsive statement to appellants' Statement of Reasons, dated June 25, 1979, at 5).

Accordingly, we conclude that Survey, which was aware of the EAR, implicity adopted that analysis and took it into account in concluding that prospecting under permit CA-1698 would not significantly affect the quality of the human environment.

Appellants also contend that Pedersen's prospecting plan "contravenes the Forest Service Multiple Use Management Plan for the area, known as the

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6/ Appellants also contend that the prospecting plan should not be approved because it is not justified "by the demonstrable likelihood of any significant mineral recovery" (Statement of Reasons at 5). However, in order to be entitled to engage in prospecting under a valid prospecting permit, a permittee need not demonstrate that minerals are present in any significant quality or quantity. See 30 CFR 231.10. It is sufficient, as MMS states in its April 1982 decision at page 7, that "the geological evidence warrants exploration in accordance with the terms of the permit and the approved plan."

Gold Valley-Hawley Meadow Study Area, which mandates protection 'from unacceptable damage due to land management activities'" (Statement of Reasons at 5). Appellants have not identified what "unacceptable damage" would result from implementation of the proposed prospecting plan. However, by letter dated April 6, 1976, the Regional Forester, Pacific Southwest Region, FS, requested BLM to rescind permit CA-1698 because it had been determined to be "in conflict with the Multiple-Use Plan for the area." See letter to LeRoy Pedersen, from Forest Supervisor, Tahoe National Forest, FS, dated March 21, 1978. BLM declined to rescind the permit in a letter to the Regional Forester, dated June 1, 1978, concluding that the permit represented "a valid contract between the Government and Mr. Pedersen." There is no discussion of the FS' Management Plan (MP) in the FEA. It is apparently Survey's position that such MP's are "not within the authority of the U.S. Geological Survey" (letter to Van Voorhis and Skaggs, from Area Mining Supervisor, Survey, dated May 9, 1979, at 3 (FEA at 184)). We note that in a letter to Pedersen, dated June 19, 1978, the Regional Forester, FS, stated: "The BLM on June 1, 1978, refused to rescind the prospecting permit, as I requested in my letter of April 6, 1978. The actions leading to that request now are immaterial, and we think you would agree that no action is now needed." We have been offered no reason for resurrecting a matter which FS, apparently, has chosen to put to rest.

Appellants also contend that Pedersen's prospecting plan does not comply with the California Surface Mining and Reclamation Act. Appellants, however, have presented no evidence of the nature of this noncompliance. We can discern none. In addition, appellants assert that the bond required of Pedersen prior to engaging in prospecting is not supported as "adequate to effect full restoration" (Statement of Reasons at 2). We believe that the burden was upon appellants to show how the bond was inadequate. This they have not done. In its April 1982 decision at page 8, MMS states that the bond "has been determined by the Supervisor to be adequate for its intended purpose."

After reviewing the FEA, we conclude that it represents a hard look at the potential environmental impacts associated with Pedersen's proposed prospecting activity under permit CA-1698. Appellants have identified no relevant areas of environmental concern which were not adequately considered. 7/ The record supports a finding that the proposed prospecting activity will not significantly affect the quality of the human environment. Friends of the Earth, Inc. v. Butz, 406 F. Supp. 742 (D. Mont. 1975), remanded to be dismissed as moot, 576 F.2d 1377 (9th Cir. 1978).

7/ Appellants also argue that they were not notified of Survey's technical examination of the permit area in the summer of 1978, which provided baseline data on geology, soils, water quality, and vegetation. There is no requirement that they be notified of such an examination. Moreover, there is nothing which prevented appellants from conducting their own EA and submitting their findings for Survey consideration. The record indicates adequate opportunity for public participation in the EA process. See letter to appellant Nejedly, from Area Mining Supervisor, Survey, dated Jan. 26, 1979. There is no requirement that public hearings be held. See 40 CFR 1506.6.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Deputy Director, Minerals Management Service, dated April 8, 1982, is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

The majority, in effect, upholds the negative declaration that the proposed action does not constitute "major federal action, significantly affecting the human environment" and, thus, concludes that the filing of an environmental impact statement (EIS) under section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332 (1976), is not required. While in agreement with this ultimate conclusion, I wish to directly address two specific aspects of the instant appeal: (1) appellants' claim that an EIS is needed because of the failure to consider the cumulative impacts of the prospecting plan for the area within permit CA-1698 together with the impacts resulting from the prospecting plan approved by the United States Forest Service (Forest Service) relating to Leroy Pedersen's mining claims located on adjacent lands; and (2) appellants' contention that the environmental analysis undertaken with reference to prospecting permit CA-1698 was fatally deficient in that it failed to examine environmental consequences which would result from full-scale mining.

Before examining these two arguments, however, I think it is important to note that the "negative declaration" is, itself, the product of a considerable amount of analysis of the possible environmental consequences which might emanate from the proposed prospecting activities. Thus, the final environmental analysis (EA) prepared by the Geological Survey (Survey) in assessing the proposed activities on permit CA-1698 consists of approximately 200 pages. This is in addition to the environmental assessment report prepared by the Forest Service with reference to activities on Pederson's unpatented mining claims, a document running more than 50 pages. And these reports are, themselves, merely the final distillation of detailed studies into the full array of environmental consequences which might be anticipated. The negative declaration in this case is not an attempt to avoid analysis of environmental consequences but rather represents the considered conclusion of Survey after those consequences have, in fact, been analyzed.

The major thrust of appellants' arguments is that by bifurcating the environmental analysis of the effects of prospecting under CA-1698 from those effects attendant to prospecting on Pedersen's adjacent mining claims, the review process of NEPA "has been unlawfully fragmented among different agencies and different components of the entire project, the consequence of which is to allow a far more environmentally destructive operation than ever would have been approved had the project been evaluated in its entirety." The majority correctly rejects this contention, as it applies to the instant case, for reasons which bear elaboration.

It is, of course, conceivable that a piecemeal approach to environmental impact analysis could result in a distortion of the real environmental consequences which might be expected. Such distortion could be occasioned by two independent factors. First, there is the possibility that some of the likely impacts would not be considered at all since, though they are a component of the total program, they do not necessarily relate specifically to any single aspect under analysis. Second, a bifurcated approach could totally miss effects which are caused by the interrelationship of different facets of a program or understate the cumulative impacts of such effects. This can

result simply because it is not uncommon for related segments of any program to have the same adverse effects, which might be miniscule when examined incrementally but rather substantial when viewed in their totality. The question before the Board, however, is not whether such a bifurcated approach is subject to possible distortions, but rather whether any such distortions have occurred herein. This is what appellants have failed to show.

Appellants have not shown that any relevant aspect of the entire program was not considered. Insofar as any synergistic impacts are concerned, Survey reviewed the prospecting plan in light of the EA prepared by the Forest Service relating to activities proposed on the mining claims and clearly considered the consequences relating to the prospecting on the mining claims in conjunction with those which might ensue from prospecting within the permit area. Additionally, Survey recognized and considered cumulative road impacts resulting from both prospecting plans. There is simply no evidence to support the assertion that Survey failed to consider all impacts or failed to analyze the cumulative effects of impacts resulting from the combined actions on Pedersen's adjacent mining claims and within the permit area. Appellants have raised the spectre that all environmental consequences may not have been adequately considered, but have failed to provide any evidence which would give substance to their concerns.

Appellants also criticize the admitted failure of Survey to consider possible impacts which could be expected to arise from full-scale mining as opposed to the prospecting plan envisioned in the instant case. The issues raised by this allegation are, to my mind, of some difficulty. To place them in perspective, I think it is important to delineate the rights attendant to a hardrock mineral permit.

Pedersen's permit was issued under the aegis of the Weeks Act, Act of March 1, 1911, 36 Stat. 963, as amended by the Act of March 4, 1917, 39 Stat. 1150 (presently codified at 16 U.S.C. § 520 (1976)). The Weeks Act provided for the acquisition by the Department of Agriculture of lands valuable for watershed protection. By the Act of March 4, 1917, supra, the Secretary of Agriculture was authorized "under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of the lands [acquired under the Weeks Act] upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States." Pursuant to section 402 of Reorganization Plan No. 3, 60 Stat. 1099, this leasing function of the Secretary of Agriculture was transferred to the Secretary of the Interior, with the proviso that mineral development of such lands could be authorized only upon a finding by the Secretary of Agriculture "that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified."

It should be noted that the appropriate official of the Department of Agriculture consented to the issuance of the instant prospecting permit, subject to various conditions. Among the special permit stipulations signed was one which stated that "to qualify for a preference right lease for all or part of the land, the permittee must * * * make a discovery of a valuable gold and/or heavy mineral deposit satisfactory to the Area Mining Supervisor."

The permit, itself, expressly noted that the "permittee shall remove from the lands only such deposits as may be necessary to experimental work or to establish the existence of valuable deposits within the permit area." Section 7 of the permit terms, entitled "Reward for discovery," provided that "the permittee may apply for a preference-right lease if he shall have discovered valuable deposits of mineral covered by this permit within the permit area and within the period of this permit as issued." 1/

It is clear under these provisions that a permittee may not engage in full-scale mining. It is equally clear, however, that the granting of a prospecting permit vests in the permittee an inchoate right to a preference right lease which would, itself, vest in the permittee upon the making of a discovery of a valuable deposit of gold or other heavy mineral. See generally, The Hanna Mining Company, 20 IBLA 149 (1975). Thus, it is certainly arguable that, to the extent to which the making of a discovery compels issuance of a preference right lease under which the lessee could engage in large-scale mining operations, an environmental analysis of the likely impacts of prospecting should also focus on any anticipated impacts associated with development, since such development is a logically foreseen result of successful prospecting. There are, however, difficulties with this argument.

First of all, the issue before the Board is the approval of the prospecting plan, not approval of the permit, itself. Having issued a permit, the Department has necessarily obligated itself to allow the permittee a sufficient opportunity to prospect the area embraced within the permit. Issuance of the permit has already committed the Department to ultimate issuance of a preference right lease upon the making of a discovery. Thus, the question is no longer whether or not full-scale development should be permitted, but only what conditions are necessary to minimize any adverse environmental consequences which might flow therefrom. 2/

Seen in this light, the approach followed by Survey represents a rational bifurcation. Under his permit, Pedersen has no present right to engage in full-scale mining though he does have rights to prospect the land. The environmental analyses undertaken were therefore properly limited to

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1/ Inasmuch as the instant permit was issued effective Aug. 1, 1975, it is unaffected by the problems relating to the 1976 regulatory amendments delineated in our decision in AMAX Exploration, Inc., 58 IBLA 312 (1981), concerning the showing required to establish a right to a preference right to lease under section 402 of Reorganization Plan No. 3. In any event, it seems clear that the Forest Service could independently require the existence of a valuable deposit as presently defined in the regulations as a precondition to issuance of a permit. See John W. Jewell, 53 IBLA 179 (1981).

2/ To the extent that appellants may now desire to challenge any prospecting or leasing activities on the instant land, it is simply too late. The decision to permit such activities was made when the permit was issued. Appellants should have, at that time, challenged issuance of the permit. See 43 CFR 4.450-2. By not doing so, they have allowed the right to prospect the lands within the permit to vest in Pedersen, rights which the Department is not free to ignore.

prospecting activities. Should Pedersen make a discovery of a valuable mineral deposit he would then have earned a preference right to lease. At that time, an environmental analysis would properly be made to assess the impact of full-scale mining. The purpose of this analysis would not be to determine whether or not to issue a lease, but would rather be limited to ascertaining the conditions under which mining would be permitted. This approach is consistent with the Federal court decisions in Natural Resource Defense Council v. Berklund, 609 F.2d 553 (D.C. Cir. 1980) and Utah International, Inc. v. Andrus, 488 F. Supp. 962 (D. Utah 1979).

It may be that Pedersen will not discover valuable mineral deposits during his prospecting activities. In such an event, no full-scale mining will occur nor will a right to a preference lease vest. If, on the other hand, a discovery is made, that is the time to examine the conditions under which mining will be allowed. There is little practical justification at the present time in ordering such an analysis since, absent a discovery during the term of the prospecting permit, no mining will be allowed, and until such time as a discovery is made the nature of the deposit as well as the methods by which it may be developed are purely speculative and conjectural. Survey's determination to await the filing of a preference right lease application before examining the environmental consequences of full-scale mining is, in the context of a prospecting permit already issued, rationally based. Accordingly, I concur in the denial of this appeal.

James L. Burski
Administrative Judge